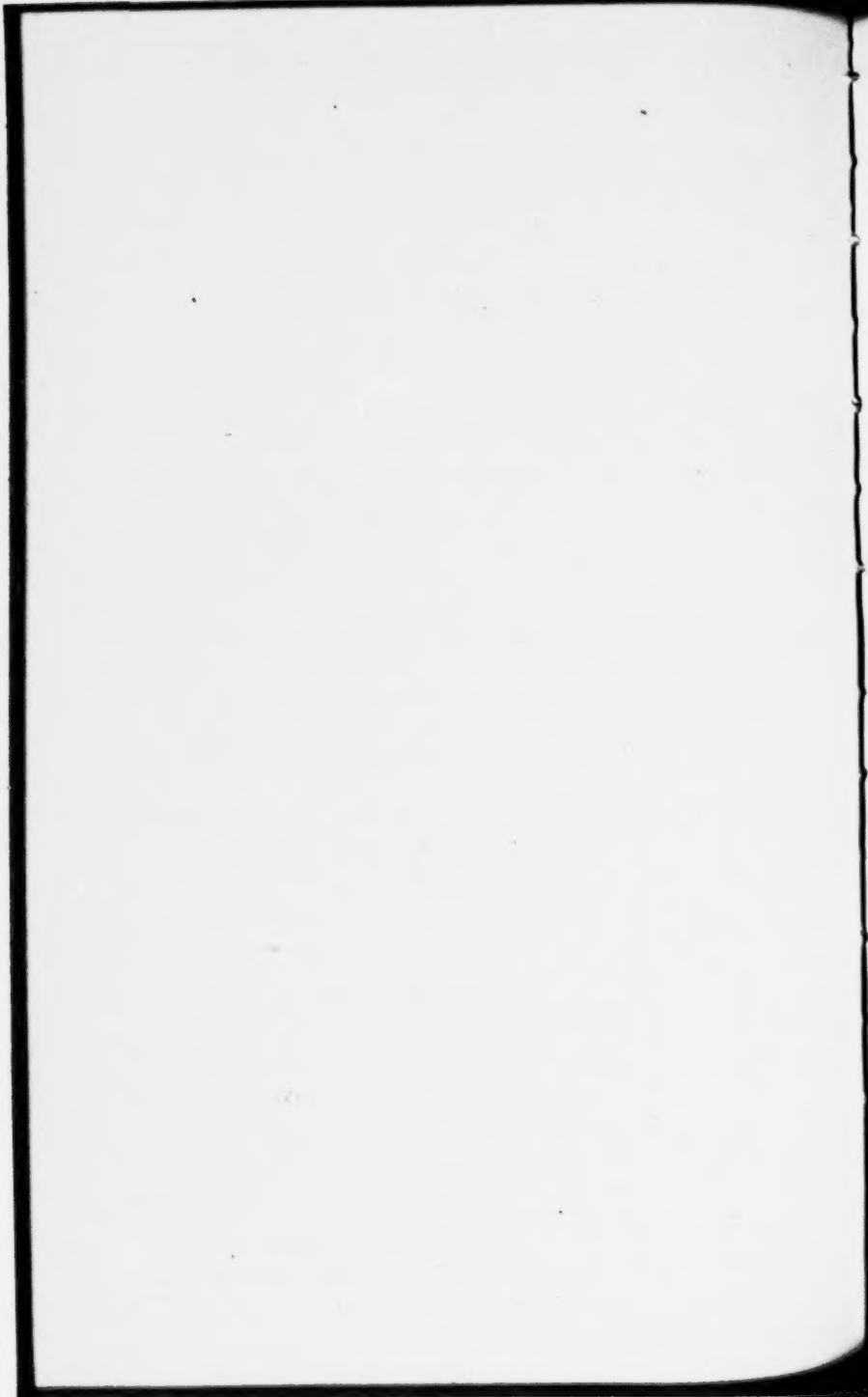


HERMAN BERMAN,

UNITED STATES OF AMERICA.

Petition for Writ of Certiorari to the United States
Circuit Court of Appeals for the Ninth Circuit.

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IN THE
Supreme Court of the United States

October Term, 1946.

No.....

HERMAN BERMAN,

Petitioner,

vs.

UNITED STATES OF AMERICA.

Petition for Writ of Certiorari to the United States
Circuit Court of Appeals for the Ninth Circuit.

A.

**SUMMARY STATEMENT OF THE MATTER
INVOLVED.**

Preliminary Statement.

This petition brings to this Court for definitive judicial construction the meaning of the phrase "religious training and belief" in Section 5g of the Selective Training and Service Act.

That phrase has never heretofore been considered by this Court. Its meaning is of grave consequence to the many thousands of conscientious objectors directly affected by the draft law, as it is of deep concern to all religious-minded persons in the United States, on the one hand; on the other hand, an interpretation from this Court of the meaning of that phrase in the draft law should be

of value to those charged with the responsibility of administering the Selective Service System.

The Court of Appeals below, Judge William Denman dissenting, refused to follow the liberal views of the Second Circuit Court of Appeals, frankly stating that it took "divergent views from those expressed in these cases." [R.39.]¹ Judge Denman stated that the decision of the majority "on this important question of law is in conflict with the decision of the Second Circuit in *United States v. Phillips*, 135 Fed. 2d 521. I am in accord with all that the Second Circuit there says and holds." [R. 56.]

Statement of the Case.

The petitioner registered under the Selective Training and Service Act of 1940 and requested classification as a conscientious objector. He was classified by his local board and the appeal board as 1-A, available for military duty, and was ordered to an induction center, there to be inducted into the armed forces. He went to the center, but refused to be inducted. He was thereafter charged under the Act, 50 U. S. C. A. App., Sec. 311, with the offense of refusing to obey a board order, and after trial before a district judge he was convicted. He was tried on November 24, 1944 [R. 15], before the decision of this Court in *Smith v. United States*, 326 U. S., 90 L. Ed. 405 (1945), and *Estep v. United States*, 326 U. S., 90 L. Ed. 405 (1945).

¹The decisions of the Second Circuit Court referred to are *United States v. Kauten*, 133 F. (2d) 703 (1943); *United States v. Downer*, 135 F. (2d) 521 (1943), and *United States v. Badt*, 141 F. (2d) 845 (1944). Cf. also *United States v. Badt*, 152 F. (2d) 627 (1945), certiorari dismissed on motion of Solicitor General, 66 S. Ct. 979, 90 L. Ed. 912.

The district judge below, in effect, refused to permit the petitioner to prove his defense that the Selective Service agencies had acted arbitrarily, and had erroneously construed the meaning of the phrase "religious training and belief." Thus, the trial judge, while permitting the petitioner's draft board file to be introduced in evidence [R. 22], announced that he would not review it, stating [R. 20]:

"I am not reviewing it . . . now you are going right into the question of reviewing matters that were before the Board for decision; and I am not going to do it." [R. 20.]²

Found guilty, the petitioner was sentenced to imprisonment for three and one-half years in a penitentiary. [R. 7.]

The petitioner's evidence is fairly set forth by the Circuit Court below, in part, thus [R. 39]:

"The petitioner was active in various social movements and had been active in various peace movements both before and after Pearl Harbor; he had become interested in the peace movement while in junior high school, and had been executive secretary in Los Angeles of the Youth Committee Against War, a national organization composed of students, religious young people and young workers who were opposed to war as a method; he was opposed to all war, and had made speeches on the question of war; his atti-

²When the petitioner's counsel sought to make an explanation of his position, the trial judge cut him off with the comment, "I don't want another speech." [R. 21.] At another point when petitioner was, through examination of a witness, seeking to ascertain whether the board had any evidence before it other than the evidence which was in the board's file, the judge observed, "I know, but you just keep scratching like a hen with one chicken, just keep scratching all the time." [R. 25.]

tude upon the question of war was based on his conscience and fundamental belief in, and devotion to, the brotherhood of all men; at all times he has been willing to and desired to go to a conscientious objector's camp and do work of national importance under civilian direction; he had even been willing to work with the American Field Service and undertake hazardous and life-risking ventures in connection therewith. He would not do non-combatant work within the jurisdiction of the army because his conscience would not permit him to do so; he could not submit to military jurisdiction which was constructed mainly for the destruction of human life when he was 'devoted to the construction of human welfare and human betterment.' He was a socialist and his belief in socialism was based on a desire to better the life of human beings in general.

"The appeal board had before it, also, the report of the Hearing Officer of the Department of Justice, which stated in part:

" 'A perusal of the numerous pamphlets and circulars of a number of which Registrant says he was the author indicates that the vigorous and crusading opposition in which Registrant participated so fervently was directed against this war.' And further,

" 'I believe that Registrant is sincere in his effort to promote the Socialist Party, in his belief that war is futile, and in his diagnosis of the war as a war for the benefit of Capitalists. He has plenty of courage. He is, and long before Pearl Harbor was, willing to espouse his opposition to war whether practical or impractical. If he stood alone, he would oppose this war and would fight our participation in it as zealously—even with equal futility—as King Canute, who tried to turn back the tide.'

"On Form 47, the conscientious objector form, petitioner stated:

" 'Therefore, for the sake of humanity and out of deep loyalty to my fellow citizens I am opposed to war and refuse to participate in any activity connected with the war effort. However, I seek to continue working in the fields of constructive effort, alleviating distress among the under-privileged members of society, assist in breaking down the barriers of race, color, and creed, and work towards a society based on social ownership and co-operative and genuinely democratic control of the means of production and distribution for the benefit of all mankind.'

"He sent a statement to his local draft board (January 25, 1943) containing the following:

" 'War as a method is totally wrong! Its futility, its hopelessness, its inexpediency, its cost in human lives are appalling! The war method cannot be, never has been and never will be a method of social progress—for it works through destruction to destruction. If a small fraction of the effort spent on one day of war were utilized toward a peaceful and sane solution of the world's problems, how much further on the road to a better world we would be—a world based on equality, peace, and plenty. I refuse to participate in this futility. I shall not assist in this wholesale massacre. Instead, I have chosen to join my ever-increasing number of comrades in refusing to co-operate in any way with this war effort. As alternative service, only under civilian direction and control, I will work in a socially constructive effort, such as

the co-operative movement, the peace movement, in reconstruction work, etc.' ”

The Appeal Board had before it the entire draft board file containing various letters from clergymen and others attesting to the fact that the petitioner's beliefs were based upon a deep and sincere desire to be of benefit to humanity and an honest conviction that he could not place himself in a position whereby he would harm any other person.

Some of these stated that he was a sincere, conscientious objector “because of his devoted work for peace” [Mrs. Helen Beardsley,³ Appendix “A”⁴]; that he held his convictions with “religious fervour” [Norman Thomas, Appendix “A” 2]; that he had “been a consistent conscientious objector . . . and that his conscience is such that he declines to take up arms to kill another human being” [Ernest Caldecott, Minister, First Unitarian Church, Ap-

³It is interesting to note that the majority of the Court below gratuitously dubbed Mrs. Beardsley as a “well-known socialist” [R. 42]; there is nothing in the record to support the Court's assertion. Of Norman Thomas, the Court thought that he was “perhaps the leading American socialist” [R. 42]; Judge Denman considered Norman Thomas “a Presbyterian and long a clergyman of churches of that faith” [R. 53].

⁴Letters contained in the draft board file of the petitioner [Deft. Ex. A], for the convenience of the Circuit Court below were printed as Appendices “A” and “B,” and attached to the petitioner's Opening Brief in the Circuit Court. In its opinion, the Circuit Court refers to these documents as Appendices “A” and “B,” respectively [R. 42]; accordingly, these documents are reprinted in Appendices “A” and “B” to this Petition, for the convenience of this Court.

pendix "A" 2]; that the petitioner's convictions are "fundamentally based on religious beliefs, even though he is not attached to our particular church" [Harold Slocum, Associate Minister, Mt. Hollywood Congregational Church, Appendix "A" 3]; that "he apparently wants to dedicate to a way of living that will help mankind and promote the highest ideals of this country. Herman Berman is not a member of any church but he is, I believe, willing to give his life in service to man." [Allan A. Hunter, Minister, Mt. Hollywood Congregational Church, Appendix "A" 4.]

According to a letter from Walter G. Muelder, Professor of Christian Theology and Christian Ethics at the School of Religion, University of Southern California, in the petitioner's Selective Service file, the petitioner "has a deep sense of reverence for life and for the sacredness of personality. . . . His reaction is not simply one of political or economic displeasure, but a total spiritual protest against the war system and all its causes along with a whole-hearted commitment to a society which shall be thoroughly democratic." [Appendix "B" 5.]

Indeed, Hearing Officer C. H. Hartke in his report stated that:

"3. Registrant states that he is a member of no church and is not a student of the Bible; that he has grown up in a Jewish home of a Jewish family, and of religious parents. When asked of what his religion consisted he stated in substance that his principal religious belief was that of doing all the good

he can for people in need, and to do everything he could to help his fellow-man—'to do by others as he would be done by.' In other words, 'The Golden Rule'; to enter into all cooperative movements and efforts to help his fellow man to develop a democratic and socialistic form of life; that he had for the last few years and expected in the future to devote himself to his work, selling and distributing pamphlets and peace literature as mentioned above."

At a time when there was an urgent need for hospital attendants, the petitioner voluntarily secured employment at the Neuro-psychiatric Ward of the Veterans' Hospital in West Los Angeles, attending wounded war veterans.⁵

Opinion of the Court Below.

The opinion of the District Court below is as yet unreported. It appears in the Record at page 36; the dissenting opinion of Judge Denman is at page 50.

Jurisdiction.

Jurisdiction of this Court is invoked under Judicial Code, Section 240(a); 24 U. S. Code, Section 347(a).

The judgment of the Circuit Court of Appeals below was entered on June 25, 1946. The Court below denied a Petition for Rehearing, filed within time allowed therefor, on August 27, 1946. [R. 69.]

⁵Appendix to Petition for Rehearing in Court below [R. 67].

Questions Presented.

1. Did the Circuit Court below erroneously construe the meaning of the phrase "religious training and belief" in the Selective Training and Service Act, when it ruled that such belief is posited upon a "concept of deity" [R. 46]; that such belief includes as an indispensable element belief in "responsibility to an authority higher and beyond any worldly one" [R. 44], and "faith in a supreme power above and beyond the law of all creation" [R. 45], as well as "belief in the super-natural"? [R. 48.]

2. Should a new trial be granted, or shall the cause be remanded because:

- a. The trial judge did not review the evidence before the Selective Service authorities, or
- b. The sentence was improper?

Specification of Errors.

The petitioner relies upon the specification of errors below [R. 28]; and on the error assigned in his Petition for Rehearing, page 1. [R. 61.] (The nature of the specification of errors is suggested by our statement of the "Questions Presented.")

B.

REASONS RELIED ON FOR ALLOWANCE OF
THE WRIT.

I.

Direct Conflict Between the Decision of the Court of
Appeals Below and the Second Circuit Court of
Appeals.

The Second Circuit Court of Appeals took the view, rejected by the Court below,⁶ that "a response of the individual to an inward mentor . . . is for many persons at the present time the equivalent of what has always been thought a religious impulse."

In *Kauten v. United States*, 133 F. (2d) 703, 708 (1943), the Second Circuit, speaking through Judge Augustus Hand, said:

"It is unnecessary to attempt a definition of religion; the content of the term is found in the history of the human race and is incapable of compression into a few words. Religious belief arises from a sense of the inadequacy of reason as a means of relating the individual to his fellow-man and to his universe—a sense common to men in the most primitive and in the most highly civilized societies. It accepts the aid of logic but refuses to be limited to it. It is a belief finding expression in a conscience which categorically requires the believer to disregard elementary self-interest and to accept martyrdom in preference to transgressing its tenets. A religious

⁶The Second Circuit is the only Court of Appeals, other than the Ninth Circuit below, that has passed upon the question.

obligation forbade Socrates, even in order to escape condemnation, to entreat his judges to acquit him, because he believed that it was their sworn duty to decide questions without favor to anyone and only according to law. Such an obligation impelled Martin Luther to nail his theses on the door of the church at Willenberg and, when he was summoned before Emperor Charles and the Diet at Worms, steadfastly to hold his ground and to utter the often quoted words: 'I neither can nor will recant anything, since it is neither right nor safe to act against conscience. Here I stand. I cannot do other. God help me. Amen.' Recognition of this obligation moved the Greek poet Menander to write almost twenty-four hundred years ago: 'Conscience is a God to all mortals'; impelled Socrates to obey the voice of his 'Daimon' and led Wordsworth to characterize 'Duty' as the 'Stern Daughter of the Voice of God.'

"There is a distinction between a course of reasoning resulting in a conviction that a particular war is inexpedient or disastrous and a conscientious objection to participation in any war under any circumstances. The latter, we think, may justly be regarded as a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse."⁷

⁷Judge Denman, below, accepted the Second Circuit Court's views quoting the following [R. 56]: "The decision of this court of appeals on this important question of law is in conflict with the decision of the Second Circuit in *United States v. Phillips*, 135 F. (2d) 521. I am in accord with all that the Second Circuit there says and holds," and that Judge Augustus Hand's opinion in the *Kauten* case "excellently stated" the "recognition of religion" as not requiring a God. [R. 55.]

And later in *United States v. Badt*, 141 F. (2d) 845, 847 (1944), that Court of Appeals rejected the views of a Selective Service hearing officer who sought to draw a distinction (as drawn by the Court of Appeals below over the protest of Judge Denman) between "religion" and "philosophical humanitarianism."

II.

The Decision of the Court of Appeals Erroneously Construes the Meaning of "Religious Training and Belief."

1. THE COURT BELOW REJECTED AUTHORITATIVE AND CONTEMPORANEOUS CONSTRUCTION OF THE PHRASE.

Thus the Selective Service System itself defines⁸ religious training and belief:

"Religious training may be considered as having been received in the home, in the church, in other organizations whose influence is religious though not professedly such, in the school, or in the individual's own personal religious experience and conduct of life. Any and all influences which have contributed to the consistent endeavor to live the good life may be classed as 'religious training.' Belief signifies sincere conviction. Religious belief signifies sincere conviction as to the supreme worth of that to which one gives his supreme allegiance.

⁸In a memorandum submitted in 1940 to the State Directors, approved both by the then Director Clarence H. Dykstra and General Lewis B. Hershey, the present director. Portions of the memorandum are reprinted in "The Conscientious Objector Under the Selective Training and Service Act of 1940," published by the National Service Board for Religious Objectors, Washington, D. C., p. 2.

“‘ . . . conscientiously . . . opposed to participation in war in any form’ may be interpreted as meaning that a person may have become a conscientious objector to war, either by specific teaching, as for instance, the Quaker tenet of non-participation in war, or by specific application of fundamental doctrines, as for instance, the Christian doctrines of reverence for life, ‘non-retaliation,’ ‘brotherly love,’ expressed in phrases such as ‘Love your enemies’; ‘Render to no man evil for evil’; etc.”

2. THE PETITIONER WAS OPPOSED TO ALL WARS BY REASON OF RELIGIOUS TRAINING AND BELIEF.

Certainly, the Record here abounds with unchallenged evidence that the petitioner believed in and practiced the doctrines of “reverence for life” and “brotherly love” within the definition of the Selective Service System itself.⁹

Thus, after reviewing all the evidence before the Selective Service agencies, the Court below conceded of the petitioner that “his attitude upon war was based on his conscience and fundamental belief in, and devotion to, the

⁹Cf. Hearing Officer C. H. Hartke’s report of the petitioner [Document No. 2, Deft’s Ex. A]: “When asked of what his religion consisted he stated in substance that his principal religious belief was that of doing all the good he can for people in need, and to do everything he could to help his fellow-man—‘to do by (to) others as he would be done by.’ In other words, ‘The Golden Rule’; to enter into all cooperative movements and efforts to help his fellow man to develop a democratic and socialistic form of life; that he had for the last few years and expected in the future to devote himself to this work, selling and distributing pamphlets and peace literature as mentioned above.”

Certainly, the “Golden Rule” is a religious precept. Believing in it, constitutes “religious belief”; practicing it, constitutes the best “religious training.”

brotherhood of all men." [R. 40.] Also, that petitioner's belief in socialism was "based on a desire to better the life of human beings, in general." [R. 40.]

Accordingly, the effect of the petitioner's belief is that he believed in the doctrines of "reverence for life" and of "brotherly love." Being opposed to *all* war because of that belief, he complied with the definition of "religious belief" of the Selective Service System. (*Cf. supra*, p. 13.)

Moreover, the petitioner consistently practiced his faith. He thus made, as the Selective Service System in the test puts it, a "consistent endeavor to live the good life" within the definition of "religious training" of the Selective Service System. (*Cf. supra* at p. 13.)

Moreover, the mere fact that the petitioner was a Socialist does not prevent him from being deeply and essentially religious; for "his belief in Socialism was based on a desire to better the life of human beings in general."

It was "for the sake of humanity and out of deep loyalty to" his fellow citizens that he was opposed to all war. So that the petitioner, in effect, made a "total spiritual protest against the war system and all its causes." Indeed, the unchallenged finding by the hearing officer that "He has plenty of courage. He is, and long before Pearl Harbor was, willing to espouse his opposition to war whether practical or unpractical. If he stood alone, he would oppose this war and would fight our participation in it as zealously—even with equal futility—as King Canute, who tried to turn back the tide" demonstrates that the petitioner was religious within the test adopted by the Second Circuit Court of Appeals in the *Kauten* case, that the essence of religious belief is that it finds "expression

in a conscience which categorically requires the believer to disregard elementary self-interest and to accept martyrdom in preference to transgressing its tenets."

In short, the petitioner listened to and followed the dictates of his "inner mentor" which, according to Judge Hand, is the equivalent of a "religious impulse."

3. THE CIRCUIT COURT'S OPINION ANALYZED.

The Circuit Court's affirmance of Berman's conviction is founded on the proposition that "philosophy and morals and social policy without the concept of deity cannot be said to be religion." [R. 46.]¹⁰ This proposition amounts to the categorical assertion that religion requires belief in God. From this premise the Court moves to the conclusion that Berman is not entitled to classification in IV-E for the reason that he submitted no evidence to show that the concept of "God" is involved in his conscientious objection to war.

It is a clear inference from the reasoning of the Court that if Berman had by some means related his moral convictions to the idea of "God," his classification in IV-E should have been allowed. Belief in God, according to the Circuit Court, is the test of authentic religion; and therefore the test of "religious training and belief."

¹⁰As properly noted by Judge Denman, the construction given by the majority of the Court below ignores that: "Many of the great religious faiths with hundreds of millions of followers have no god." [R. 54.]

The Court bases its claim that belief in God is essential to religion on the dictionary type of definition,¹¹ but nowhere discusses the suitability of lending the force of law to limits thereby established. There is no consideration of the fact that dictionaries are compelled by space limitations and by the influence of tradition to confine definitions relating to philosophical and theological subjects to brief accounts of past and present usage, with no pretense at offering final judgments concerning questions that have been debated by the greatest minds of the past, and are still subject to much controversy in the present day. It is one thing to employ a dictionary to obtain approximations of the characteristics of religion as currently conceived, but quite another thing to require by law that a man's religion be conceived and expressed in such terms. Religious freedom means precisely the right of each man to conceive his religious beliefs and to worship in his own way. A decision which rules to establish orthodoxy in religious belief is in clear violation of the First Amendment to the Constitution. It is a "religious test."

It may be added that an important consideration for the Congress in formulating the provisions of Section 5g of the Selective Service Act was to make it possible for administrators to assure themselves that men attempting to qualify as conscientious objectors had not adopted this

¹¹Judge Denman points out that the opinion of the majority even ignores many dictionary definitions which "recognize that religion need have no god." [R. 55.]

Without attempting in the text of this Petition to give this Court a comprehensive definition of what constitutes religion, we attach hereto as Appendix "C" the text of a pamphlet published by the War Resisters League entitled "What Is Religious Training and Belief."

position as a temporary expedient in order to evade military service. The requirement of scruples against war "by reason of religious training and belief" was manifestly intended to assist in the just administration of the Act, giving opportunity for distinction between the sincere objectors to war and those who were lacking in deep scruples. "By reason of religious training and belief" implies a profound conviction, based on a way of life that has been consciously adopted. There is no reason to assume that the Congress intended this phrase to be rigidly interpreted as a religious test respecting the doctrinal beliefs of claimants to the IV-E classification. Congress has not the right to establish a legal criterion of what are religious beliefs and what are not. Congress may and does have the right to test the veracity, the sincerity and the general character of applicants for office and of those who seek to qualify as conscientious objectors under the law. Congress, as the Circuit Court points out [R. 44], makes many laws inclusive of morals, but it may not define religion in the formal terms of belief.

The fact is that the Court has condemned Berman as irreligious because his sort of religion does not correspond to dictionary definitions. His religion is unorthodox. But how many of the citizens of the United States today would be willing to accept without qualification the common dictionary definitions as correctly describing their religion? What would be the effect of attempting to establish with the force of law, in some other relation, a dictionary definition of religion, imposing consequent obligations or penalties on all unbelievers? We submit that this Court cannot contemplate the affirmation of the decision of the courts below without accepting in principle the validity of such legislation.

If Berman had been able consciously to formulate his religious convictions in some other manner, more conformable to an established creed, his recognition as a conscientious objector would doubtless have been assured. But Berman was compelled by an internal monitor to state his beliefs as he felt them, without adopting a familiar usage or theological form of expression. And, according to the decision of the Circuit Court, Berman must now suffer the punishment accorded to non-conformists as established by dictionary definition.

The Circuit Court, had it been in session at the time of the Reformation, would presumably have denied any genuine religious inspiration for the beliefs of Martin Luther, since Luther failed to define his religion in accordance with the prescribed meanings of the orthodoxy of his time. Surely many "authoritative" sources could have been adduced in evidence of his irreligious views!

If Berman's attitude cannot be called religious, and if his methods of developing his convictions are to be denied a religious quality, then a Federal Court of Appeal has assumed the right prerogatives of individual conscience itself, claiming the right to legislate concerning the requirements of Berman's personal religion and to prescribe the doctrinal beliefs he must maintain in order to avoid criminal prosecution.

Turning to the specific statements of the Circuit Court, theological scholarship gives little support to the claim that belief in God is necessary to religion. Only a casual reference to the literature of religious thought demonstrates the existence of great religious and system of religious philosophy which lack the concept of deity. Actually, many theological and scriptural treatises contain studied rejection of the idea of a Supreme Being.

Yet a majority of the Judges of the Circuit Court require of Berman an expression of faith comparable to the religious professions with which they happen to be familiar, being unwilling to acknowledge the possibility of a religious inspiration which is not overtly connected with the conventional idea of God. ●

This decision of the Court recalls the statement of the eminent scholar, Max Müller, that

“ . . . if an historical study of religion had taught us . . . one lesson only, that those who do not believe in our God are not therefore to be called Atheists, it would have done some real good, and extinguished the fires of many *auto da fé*.” (*Natural Religion*, p. 228.)

Hastings' *Encyclopedia of Religion and Ethics* quotes formal proofs of the non-existence of God from the literature of Buddhism. (*Op. Cit.*, Vol. II, 184.) The religious philosophy of Buddhism is stated to be “radically averse to the idea of a Supreme Being—of a God, in the Western sense of the word.” (*Ibid.*, 183.) The Sankhya School of the Hindu religion is characterized by a positive denial of the existence of God. Hastings offers extensive quotation of this Hindu argument against the existence of God, because it “is so important and so characteristic of Indian thought.” (*Ibid.*, 185.)

Thus two great world religions, numbering hundreds of millions among their believers, include explicit denials of the existence of God in important theological works. It can hardly be argued, therefore, that belief in God is essential to religion, or to a background of “religious training and belief.”

In the West, as Max Müller and others have frequently pointed out, deviation from conventional religious attitudes has often been made the occasion for charges of heresy and for persecution. The early Christians, despite their extraordinary piety and high personal morality, "were called atheists because they did not believe as the Greeks believed nor as the Jews believed." And, we may add, they were often punished by the Romans for refusing military service.

"Spinoza was called an atheist, because his concept of God was wider than that of Jehovah; and the Reformers were called atheists, because they would not deify the mother of Christ or worship the Saints." (Max Müller, *loc. cit.*)

An article in Hastings' *Encyclopedia* begins its discussion of the social doctrine of Auguste Comte, the founder of modern sociology, with these words:

"Comte's religious conception appears to be atheistic, insofar as it rejects the view that nature and humanity are the products of a self-existent and self-conscious Eternal Cause." (*Op. cit.*, II, 179.)

It is to be noted that the writer of this article, free from the pressures of controversy, and unaffected by any need for special pleading, speaks as a matter of course of "Comte's *religious* conception." (Our emphasis.) A passage from an essay on the religious ideas of the Positivists—as Comte's followers were known—written by Dr. Stanton Coit, the founder of the "Ethical Culture" societies of England, treats of the God-idea:

"So far as I am aware, the Positivists have never declared that Humanity is God. But they have maintained that all the homage and obedience which has

been rendered to God should now be transferred to Humanity. They have worshipped Humanity, they have prayed to it, they have found strength and consolation in communion with it. Surely, then, it has become their God." (*International Journal of Ethics*, July, 1900, p. 425.)

Berman, while no more than the Positivists declaring that Humanity is his "God," recorded on Selective Service Form 47 that he was "conscientiously opposed by reason of religious training and belief to participation in war in any form," and gave as his reason "the sake of *humanity*" and "deep loyalty to my fellow citizens." (Our emphasis.)

Surely, the determination of Berman's guilt or innocence should not turn on the presence or absence of a word in his profession of faith—the word "God"!

Even the Circuit Court, in affirming Berman's conviction, is at pains to reject "the literal word meanings of creeds" and admits growth in religious thought and understanding during the past 150 years. [R. 45.] This view of the Court, unfortunately nullified by its judgment of Berman, is in full accord with many contemporary theological conceptions and with the modern sociological approach to religion. Most Unitarians, Universalists, and many eminent preachers and teachers of the present day would define religion without any reference to a presumed entity to be labelled "God." Many of the most conscientious members of our society, before and since the time of Benjamin Franklin, have stood within the ranks of those whose religion required no "God" as an essential part of their faith. Thomas Jefferson, for example, writing counsel to his nephew at school, said:

"Fix Reason firmly in her seat, and call to her tribunal every fact, every opinion. Question with

boldness even the existence of a God; because, if there be one, he must more approve the homage of reason than of blindfolded fear. . . . Do not be frightened from this inquiry from any fear of its consequences. If it end in a belief that there is no God, you will find incitements to virtue in the comfort and pleasantness you feel in its exercise and in the love of others which it will procure for you." (J. E. Remsburg, *Six Historic Americans*, p. 66.)

Anticipating the modern spirit, Jefferson mused in 1776:

"Why have Christians been distinguished above all people who have ever lived, for persecutions? Is it because it is the genius of their religion? No, its genius is the reverse. It is the refusing *toleration* to those of a different opinion. . . ." (A. J. Nock, *Jefferson*, p. 304.)

It is this toleration, for which Jefferson longed and labored, and which is established, in spirit, in the Constitution of the United States, which we find embodied in the modern definitions of religion. The formulations of a number of nineteenth and twentieth century authorities may be cited:

1. Höffding: Religion is belief in the conservation of value.
2. Marshall: The restraint of individualistic impulses to universal human impulses.
3. Kropotkin: A passionate desire for working out a better form of society.
4. E. S. Ames: The consciousness of highest social values.
5. Elwood: Participation in ideal values of the social life.

6. E. A. Ross: The conviction of an ideal bond between the members of society.

7. Matthew Arnold: Religion is morality touched with emotion.

8. G. B. Foster: The conviction that the cosmos is ideal-achieving.

9. G. W. Knox: Man's highest response to what he considers highest.

10. G. A. Coe: Living the good life.

11. J. R. Seely: Any habitual and permanent admiration.

12. Bonsanquet: Loyalty and devotion toward values which are beyond the immediate self.

To seek to define "religious training and belief" in the narrow terms of traditional religion is to go contrary to much of the best thought of the past three centuries. To be a conscientious objector *on religious grounds* surely cannot mean that one must accept a naive anthropomorphism in religion based upon a two-story universe theory. The Circuit Court [R. 46] cites Mr. Justice Hughes' dissent in the *Mackintosh* case—"The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation"—as though intending to use the term God to substantiate the idea of an *entity* existing outside the self. This is to fall into dualistic traditionalism and anthropomorphism which elsewhere [R. 45-46] the Court indicates it intends to avoid. One distinct advantage (to students of religion and thoughtful humans generally) which the term "God" has had is that it may stand for the inscrutable mystery of

life, birth, nature generally, or for “the moral law within” (of Immanuel Kant).

To use the word “God” in any instance *as though it settled an issue* is to indicate that one should not have used the word at all.

It would seem to be impossible for one to be truly devoted (*i. e.*, without self-interest) to man’s general welfare, and remain truly conscientious and selfless in his devotion, without drawing upon all those resources (whatever their nature) which constitute what the religionist usually refers to as God, the Absolute, Nature, the Logos, the Tao, etc. Whether one chooses to use any of these terms in describing the source of his own drive or dynamic is quite beside the point—just as water satisfies thirst whether one knows its molecular structure or not. To insist, then, that one’s philosophy of life is not “religious” unless it contains explicitly the “concept of deity” is to be guilty of theological traditionalism and outright dogmatism.

Citing the First Amendment to the Constitution, the Circuit Court asserts that “it would be quite ridiculous to argue that the use of the word ‘religion’ could have been understood by the authors of this part of our national charter . . . to be inclusive of morals or devotion to human welfare or of the policy of government.” [R. 44.] We submit that it is even more “ridiculous” to imply that such concerns are beyond the pale of religion and cannot be animated by a religious impulse. It seems clear that the intent of the First Amendment was to render it forever impossible for the Congress of the United States to enact a law which would attempt to define the “true” religion, thereby working hardship on or discrimination

against those who have the misfortune to dissent or believe otherwise.

In effect, the decision of the Circuit Court assigns a particular view of religion to the authors of the Constitution and proceeds to force all subsequent religious experience into the Procrustean limitations of that view. But it is indeed questionable that many of the signers of the Declaration of Independence and makers of the Constitution would themselves have accepted the limitation which is now proposed to have the force of law. As a matter of fact, the authors of the Constitution anticipated and guarded against precisely the sort of limitations on religious belief that the Circuit Court wishes to apply. The proceedings of the Constitutional Convention, as published by Thompson, the secretary, show:

“ . . . that the question was gravely debated whether God should be in the Constitution or not, and after a solemn debate he was deliberately voted out of it. . . . There is not only in the theory of our government no recognition of God's laws and sovereignty, but its practical operation, its administration, has been conformable to its theory. Those who have been called upon to administer the government have not been men making any public profession of Christianity. Washington was a man of valor and wisdom. He was esteemed by the whole world as a great and good man, but he was not a professing Christian.” (J. E. Remsburg, *Six Historic Americans*, pp. 120-21.)

More than a few of the Founding Fathers would have failed to qualify as “religious” if the measure of their piety had been taken in terms of the prevailing orthodoxy of their day. Actually, orthodox spokesmen of that period

found many occasions to condemn as atheists the majority of distinguished Americans in the generation of the Fathers. The Reverend Dr. Wilson, in a sermon published in the *Albany Daily Advertiser* for 1831, pointed in dismay to the fact that most of the founders of our country were "infidels," and that *of the first seven presidents not one of them had professed his belief in Christianity*. (Harry Elmer Barnes, *History and Social Intelligence*, p. 347.)

The historian, Dr. Barnes, remarks:

"The late Mr. [Theodore] Roosevelt, in one of his more facetious and gracious moments, referred to Thomas Paine, who had rendered most notable services in promoting the independence and formation of our country, as a 'dirty little atheist.' By the same criteria most of the Fathers, certainly Franklin, Washington, Adams, Jefferson, Madison, Marshall, Morris and Monroe, were likewise 'dirty little atheists,' as they all shared the religious belief of Paine and most other intellectuals of the time, namely, either Unitarianism or Deism." (*Ibid.*)

Having a lively appreciation of the evils of bigotry in religion, the authors of the Constitution took care to prevent any popular effort to secure religious conformity by law. In 1796 an attempt to insert a "Christian" amendment in the Constitution was defeated. A speaker for the amendment referred to Washington's "atheistic proclivities," censuring his admiration for the works of Thomas Paine. Washington, as we know, during his second administration, assured the Mohammedans of Tripoli, through his diplomatic representative, that "the government of the United States is not in any sense founded upon the Christian religion"—a view later approved by

John Adams, who sent the treaty containing this statement to the Senate.

During the campaign for the presidency in 1800, Jefferson was widely attacked as a free-thinker. He was accused of disbelief in the conventional religion of his time, and so fearful were the orthodox of his infidel opinions that two pious ladies of New England, when they heard he was elected, buried their Bibles in the garden lest the terrible Jefferson send officers to confiscate the holy Scriptures!

It can hardly be urged that any "popular" meaning of religion was intended by the authors of the Constitution to be used in determining whether a man is religious or not. Rather, if there be any criterion at all of the quality of being "religious," it must be sought in some other quarter than prevailing custom and inherited belief.

The decision of the Circuit Court notes that the Selective Service Act was modified, during passage, to allow the classification in IV-E of men not members of any religious organization, yet rules against Berman on the ground that he was not affected in his resolve to be a conscientious objector by "religious training and belief." [R. 49.] But if, within the meaning of the Act, a man may be a religious objector to war without belonging to a specific religious organization, why may he not also obtain religious training and belief from non-organizational sources?

It has been shown that, from the earliest days of the Republic, numerous individuals, many of them illustrious figures in American history, obtained their moral and religious ideas from private study and reflection, and the quality of their religion became manifest in their lives.

Countless men of today similarly derive their religious inspiration from unorthodox faiths; indeed, it is often claimed as one of the glories of American achievement that in the United States such men are free to practice their own individual religion. Shall we now circumscribe this freedom with limiting definitions founded on the dogmas of prevailing orthodoxy? Shall we jettison the right of an individual citizen to define his own religion and to practice it, when it is not the character of the practice which is in dispute—the law provides for religiously inspired conscientious objection—but simply the doctrinal authenticity of his profession of religion?

The evidence is ample that the views of Herman Berman may qualify as a religion in the modern meaning of the term. Berman has said he is religious in his objection to war. Berman has nowhere been shown to be a liar. His sincerity has not been questioned. Thus, the conviction of Berman is tantamount to the assertion that he is a criminal before the law because he failed to adopt a familiar or dogmatic version of religion; that he is, in short, to be punished for doing his own religious thinking.

We cannot believe that this Court will allow this medieval requirement of religious conformity to stand. If Berman had been proved a wastrel, a hypocrite, or one whose opinions were shaped by a desire to escape military service from cowardice, or from sheer selfish disregard of his duties as a citizen, there might be some ground for claiming that he is not religious. But the evidence all points to the profoundly principled convictions on which Berman's opposition to war is based—convictions which guided his life from his school days up to the present.

It is not here maintained that the question of whether a man is religious or not can be simply determined. Fortu-

nately, this problem is seldom presented to the courts. But when such questions do arise, it is absolutely necessary, we submit, that the greatest of care be taken to protect that most crucial of the Four Freedoms—freedom of religion. A man's religion is his life. It is valued above life by the truly religious man. And the quality of a man's religion is best determined by reference to the quality of his actions and the consistency of his resolves.

In the case of Herman Berman, however, there is no great difficulty in determining the fact of his conscientious beliefs and their sustaining power in his life. The record of his career is not obscure. It is not even at issue in the contentions before the Court. The claim is simply that Berman's beliefs are not "religious." We reply that, under the circumstances of his action, and in consideration of the evidence, that this claim is without support and cannot be sustained.¹²

¹²Because lawyers have no special competence in a study of definitions of religion, and religious scholars may, we attach to this brief, as Appendix "D," a comment by Professor Walter George Muelder, Dean, Boston University, School of Theology, upon the opinion of the Circuit Court below. We incorporate this comment as part of our argument. Professor Muelder had attested to the petitioner's religious training and belief in a letter introduced in evidence below, set forth as Appendix "B" to this Petition. [Deft. Ex. "A."] For the Circuit Court's comment upon Professor Muelder's views, see Record at p. 43. Professor Muelder was formerly professor of Christian theology and Christian ethics, Graduate School of Religion, University of Southern California.

III.

The Trial Judge Did Not Review the Evidence Submitted to the Selective Service Agencies. Hence the Cause Should Be Remanded for a New Trial.

The factual support for the foregoing is set forth *supra* and is not repeated here.

IV.

The Sentence Imposed by the District Court Was Excessive and Improper; the Judgment Should Be Reversed and the Cause Remanded for Re-sentence.

At the time of sentence, the trial judge stated:

"The Court feels that this is one of the most flagrant cases that it has had before it; not only flagrant in the violation of the law but the attitude of this defendant." [Supplemental Record p. 2, Proceedings on Sentence, Rep. Tr. for Dec. 18, 1944.]

It is submitted that there is nothing in the record in the instant case, either before the Selective Service agencies, or before the trial judge (unless, perchance, it is that the petitioner is a Socialist and the trial judge was prejudiced against Socialists)¹³ that warranted, or supported, the trial judge's statement, that the petitioner was "flagrant" in his attitude.

Throughout the trial the trial judge seemed to have acted arbitrarily. From his own statement it is reasonable

¹³Cf. *United States v. Carolene Products*, 304 U. S. 144, 152, 58 S. Ct. 778, 82 L. Ed. 1234 (1938), footnote.

to infer that he did not review the evidence submitted by the defendant to the Selective Service agencies. [R. 20.]¹⁴

Apparently the sentence imposed by the trial judge upon the defendant was the severest meted out by him, during a period of approximately four years, out of all of the Selective Service violators that came before him for sentence. (Cf. affidavit attached to Petition for Rehearing in the Circuit Court below.)

This Court has jurisdiction, in the exercise of its broad appellate jurisdiction, to make such disposition of the case as justice requires.¹⁵

The uncertainty in the law at the time of the sentence;¹⁶ ambiguities in the record, as to whether the trial judge did, or did not, review the record before the Selective Service authorities, and the further ambiguity and uncertainty as to any basis for the trial judge's observation that

¹⁴The trial judge, in other cases, involving conscientious objectors, and particularly Jehovah's Witnesses, imposed fines upon those seeking a jury trial, not upon those waiving a jury trial. *Newcomb v. United States*, 143 F. (2d) 586 (1944).

¹⁵Cf. *Patterson v. Alabama*, 294 U. S. 600, 608, 55 S. Ct. 575, 79 L. Ed. 1082 (1935); *McNabb v. United States*, 318 U. S. 332, 63 S. Ct. 608, 87 L. Ed. 819 (1943); *Yosui v. United States*, 320 U. S. 115, 117, 63 S. Ct. 1392, 87 L. Ed. 1793 (1943).

See also: *Villa v. Van Schaick*, 299 U. S. 152, 155, 57 S. Ct. 128, 81 L. Ed. 91 (1936); *New York ex rel. Whitman v. Wilson*, 318 U. S. 688, 63 S. Ct. 840, 87 L. Ed. 1083 (1943); *Mathews v. West Virginia ex rel. Hamilton*, 320 U. S. 707, 708; *Walling v. Reuter, Inc.*, 321 U. S. 671, 676, 64 S. Ct. 826, 88 L. Ed. 1001 (1944); *Husty v. United States*, 282 U. S. 694, 51 S. Ct. 240, 75 L. Ed. 629 (1931).

¹⁶Cf. Justice Frankfurter's observations in *Estep* and *Smith* cases.

the "attitude" of the defendant was "flagrant," would warrant a resentence of the defendant.¹⁷

Wherefore, the petitioner prays that this Court grant a writ of certiorari; and thereafter order the judgment below reversed, or in the alternative, remand the cause for a new trial or for resentence.

Respectfully submitted,

A. L. WIRIN,

FRED OKRAND,

Attorneys for Petitioner.

¹⁷*Cf. Hysler v. Florida*, 315 U. S. 411, 427, 62 S. Ct. 688, 86 L. Ed. 932 (1942), and cases cited by Justice Black (dissenting) (in footnote 16) including *Villa v. Van Schaick*, 299 U. S. 152, 57 S. Ct. 128, 81 L. Ed. 91 (1936); *State Tax Commission v. Van Cott*, 306 U. S. 511, 59 S. Ct. 605, 83 L. Ed. 950 (1939); *Minnesota v. National Tea Co.*, 309 U. S. 551, 60 S. Ct. 676, 84 L. Ed. 920 (1940).

APPENDIX A.

LETTERS CONTAINED IN THE DRAFT BOARD FILE IN
BEHALF OF APPELLANT'S CONTENTION THAT HE
WAS A CONSCIENTIOUS OBJECTOR.

1907 Escarpa Drive
Los Angeles, Calif.
September 27, 1942

To Whom It May Concern:

Herman Berman has been known to me for about two years and I am convinced that he is a sincere conscientious objector. I believe this because of his devoted work for peace, prior to the declaration of war, because of the fine friends he has who believe in him, and because conversation with him impresses me with his honesty.

I think it was the purpose of the conscientious objector clauses of the Selective Service Act to exempt just such earnest objectors. Herman Berman, I feel sure, will not fail to serve his country intelligently and constructively in a Civilian Public Service Camp and after the war.

Yours respectfully,

(Mrs. John) (signed) HELEN MARSTON BEARDSLEY

20 Gramercy Park
New York City
October 19, 1942

Selective Service Local Board or
Other Competent Authority:

This letter will testify to the fact that I have known Herman Berman for some years.

I have never discussed specifically with him his position on war but I have known of his deep sincerity. He holds

his convictions with religious fervor and he tries to make his conduct conform to his convictions. It is to this quality of sincerity that I am bearing witness.

Truly yours,

(Signed) NORMAN THOMAS

FIRST UNITARIAN CHURCH
2936 West Eighth Street
Los Angeles, California
September 14, 1942

To Whom It May Concern:

The undersigned has known Mr. Herman Berman for the past two and one-half to three years, and has had several conversations with him on the subject of peace and war.

Mr. Berman has been a consistent Conscientious Objector throughout that period and, as far as I have been able to determine, his views are based upon a conviction and are not due to lack of courage or cowardice. Mr. Berman is willing to undertake any duties that may be assigned to him, looking to his country's welfare, but his conscience is such that he declines to take up arms to kill another human being.

My own respect for Mr. Berman's views is enhanced by the fact that while I am opposed to war, I see it sometimes as a necessity, and at the present moment have two sons in the armed forces. Consequently, my support of Mr. Berman's position is not contingent upon sharing his views.

Yours truly,

(Signed) ERNEST CALDECOTT

Minister

September 5, 1942

To Whom It May Concern:

I have known Herman Berman several years, since we have membership together in two or three organizations, and I have found him devoted to worthy objects of human service.

In many conversations with him, and in certain group discussions, I have come to know that he is conscientiously opposed to war, and to my knowledge he has held these convictions over a period of years. I am certain that these convictions are fundamentally based on religious beliefs, even though he is not attached to our particular church.

There is no doubt in my mind that he is entitled to the classification of 4-E and should be given the opportunity of carrying on some work of national importance under civilian directions instead of military service.

Very truly yours,

(Signed) HAROLD SLOCUM
Associate Minister.

Mt. Hollywood Congregational Church
Prospect Avenue and Rodney Drive
Hollywood, California

September 5, 1942

To Whom It May Concern:

Herman Berman, 5124½ DeLongpre Avenue, Los Angeles, I have known a little more than two years. I have had several talks with him and have observed him rather closely and am convinced that he is a young man of real sincerity, unequivocally devoted to constructive purposes and at the same time determined not to take part in war.

My impression is that his conviction against the war method and for non-violent methods of action is deep-rooted. It is my job as a pastor to sense by intuition and by conversation with people how deeply rooted their conscience and convictions are and so I feel somewhat qualified in the case of Herman Berman to say that my estimate of his character would not be a casual one but would rather be a serious one, with a basis of experience to support it. My estimate is that he is not only sincere. He is also the kind of young man that has definite ability and will power and this ability and will power he apparently wants to dedicate to a way of living that will help mankind and promote the highest ideals of this country.

Herman Berman is not a member of any church but he is, I believe, willing to give his life in service to man. There might be a question in the minds of some as to whether or not this is a religious attitude. I, myself, am convinced that the depth of his conviction attested by the kind of life he has been living with a good deal of consistency justifies me in saying that to me as a pastor this young man is entitled to a 4-E classification. If I had any question about this I would not say it, since the cause to which I am ordained would not be benefited by any sentimentality on my part.

Sincerely,

(Signed) ALLAN A. HUNTER
Minister.

Mt. Hollywood Congregational Church
Prospect Avenue and Rodney Drive
Hollywood, Calif.

APPENDIX B.

LETTER FROM PROFESSOR WALTER G. MUELDER, TESTIFYING TO APPELLANT'S RELIGIOUS TRAINING AND BELIEF.

January 15, 1944

Mr. Huntington P. Bledsoe
Federal Building
312 North Spring Street
Los Angeles

My dear Mr. Bledsoe:

I have been asked by Mr. Herman Berman to send you at this time a letter stating my opinion regarding the sincerity of his conscientious objection to war and regarding the religious character of the consciousness.

Mr. Berman is a Socialist, and like many Socialists is unalterably opposed to war and to methods of violence. He has a deep sense of reverence for life and for the sacredness of personality. Like most socialists that refuse to participate in so-called "capitalistic" wars, he affirms that the dominant economic system inevitably fosters war along with its ruthless competition, exploitation of persons, class conflict, and imperialism. His reaction is not simply one of political or economic displeasure, but a total spiritual protest against the war system and all its causes along with a wholehearted commitment to a society which shall be thoroughly democratic. There is no doubt in my mind that Socialism is a way of life for Mr. Berman and is pursued with no ulterior motives.

Is such conscientiousness religious? For over a hundred years movements of a deeply spiritual type have existed in western civilisation, which have broken with traditional theistic credos and formulations. August Comte was the

founder of a group which practiced the Religion of Humanity, though rejecting ordinary theological categories. Standard works in religious philosophy recognize as religious the Ethical Culture Society founded by Felix Adler. The eminent American psychologist of religion, Edward Scribner Ames, in *The Psychology of Religious Experience* defines religion as "the consciousness of the highest social values." In his book, *A Common Faith* (p. 27), John Dewey says: "Any activity pursued in behalf of an ideal and against obstacles and in spite of threats of personal loss because of conviction of its general and enduring value is religious in quality." This outstanding American philosopher says on the previous page: "Faith in the continued disclosing of truth through directed co-operative endeavor is more religious in quality than is any faith in a completed revelation."

Those of us who work professionally and academically in the field of religion simply have to recognize humanism as a type of religious expression, though many sects and churches would brand it as atheistic and therefore irreligious. For increasing thousands of persons in our western culture some type of naturalistic humanism sensitive to human values and to social responsibility and to a more cooperative society has religious value. I would have to rule outside the pale of religion some of our most outstanding American clergymen if I did not recognize as religious in men their commitment to what is for them supremely worthful. As I have come to know the mind and activities of Herman Berman, I would quickly classify his Socialism and his conscientiousness as religious. He is not simply opposed to this war, but to any war.

It is interesting to note in the Kauten Case a recognition of the general situation which I have sketched above. The Court said:

"The provisions of the present statute take into account the characteristics of a skeptical generation and make the existence of a conscientious scruple against war in any form, rather than allegiance to a definite religious group or creed, the basis for exemption. . . . A compelling voice or conscience . . . we should regard as a religious impulse. . . .

"There is a distinction between a course of reasoning resulting in a conviction that a particular war is inexpedient or disastrous and a conscientious objection to participation in any war under any circumstances. The latter, and not the former, may be the basis of exemption under the Act. The former is usually a political objection, while the latter, we think, may justly be regarded as a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse."

I hope these paragraphs will aid in clarifying the point that as a conscientious objector Mr. Berman is a religious objector in a currently acceptable meaning of the term religious.

Very truly yours,

(Signed) WALTER G. MUELDER
Professor of Christian Theology
and Christian Ethics
Graduate School of Religion
University of Southern California

APPENDIX C.

What Is Religious Training and Belief?*

We must look, for the basis of a sound interpretation, into the definitions of religion. Even the scantiest of looks indicates the tremendous varieties of religious experience and therefore the wide variation in definition. A common denominator can be reached by saying that religion is an individual's theory of his relation to the universe and to other individuals in it. In this sense, religion is an attitude or conviction from which flows definite actions, which may include joining with others who share this conviction in a church or sect. That the absence of this joining indicates absence of religion does not follow.

This subjective quality of religion has been emphasized by many great men. The most famous statement of it is by Jesus, "The kingdom of God is within you." Emerson's "God builds his temple in the heart on the ruins of churches and religions" is another. "The positive content of religion," says Edward Carpenter, "is the intuitive sense—whether conscious or subconscious—of an inner unity and continuity with the world around."

If the religious belief is subjective and intuitive, it follows that religion can have no universal creed, no single universal belief, even belief in God. Anthropologists and historians bear this out. So does the New International Encyclopedia in dividing definitions of religion into two classes:

"The first class defines religion as an attitude of conduct and life directed towards a power without. . . . It is

*Pamphlet published by War Resisters League.

possible, however, to consider the essence of religion as experience without regard to the object towards which it is directed. . . . A common definition of this case is, 'Religion is that to which a man attaches supreme value; that which he would rather die than give up.' "

Based upon such a definition of religion, an inner conviction of the supreme value of human life—a conviction so strong that one is willing to defy all pressures, even to die, in order to maintain and fulfill it—is a religious belief.

It may be asked whether, if religion be defined so subjectively, there can be any objective measurement at all? How can one distinguish between a man of religious belief against war and a man of mere disinclination or of timidity?

The objective measurement of religious belief can be, and many religious men have held that it must always be, one of conduct. The Quakers, whose members subscribe to no creed, whose church has no body or dogma, have evidenced the religious nature of their opposition to war by their conduct during three centuries. "We believe," said one of their members recently, "that religion is 99% conduct." William Penn expressed it in these words:

The humble, meek, merciful, just, pious and devout souls are everywhere of one religion, and when Death has taken off the mask they will know one another though the diverse liveries they wear make them strangers.

Others among our country's founders were of this opinion. "My religion is to do good," wrote Tom Paine. "I think," said Benjamin Franklin, "vital religion has always suffered when orthodoxy is more highly regarded

than virtue: and the Scriptures assure me that at the last day we shall not be examined on what we *thought*, but by what we did; and our recommendation will not be that we said, 'Lord! Lord!', but that we did good to our fellow creatures." Thomas Jefferson's lofty spirit shines through the letter written to a friend (Miles King) in which he, too, defines religion as "doing":

He (God) has formed us moral agents . . . that we may promote the happiness of those with whom He has placed us in society, by acting honestly towards all, benevolently to those who fall within our way, respecting sacredly their rights, bodily and mental, and cherishing especially their *freedom of conscience*, as we value our own. I must ever believe that religion substantially good which produces an honest life, and we have been authorized by One whom you and I equally respect, to judge of the tree by its fruit. Our particular principles of religion are a subject of accountability to our God alone. I inquire after no man's, and trouble none with mine; nor is it given to us in this life to know whether yours or mine, our friends' or our foes', are exactly the right. Nay, we have heard it said that there is not a Quaker or a Baptist, a Presbyterian or an Episcopalian, a Catholic or a Protestant in Heaven, that, on entering that gate, we leave those badges of schisms behind and ourselves united in those principles only in which God has united us all.

Perhaps we need ask nothing more than that these words of Thomas Jefferson be hung in the offices of every draft board in the country. They sum up the belief of some of our founders that religion is not merely a sec-

tarian activity, nor even a matter of membership. If the test of religion were the latter, Abraham Lincoln, who never joined openly a church, would have failed it. Yet who could doubt that he was a deeply religious man?

The Shorter Oxford English Dictionary defines religion as "devotion to some principle; strict fidelity or faithfulness; pious affection or attachment." (*Oxford*, Vol. II, p. 1933.)

Among the definitions of the word "religious" given in Webster's New International Dictionary, 1934 edition, are the following: (1) manifesting devotion to, or the influence of, religious, pious, godly; (2) scrupulously faithful or exact; strict; conscientious, zealous; fervent; devout.

The Century Dictionary defines religion as "a sense of duty," and quotes Latimer in one of his sermons as saying, "For *religion*, pure *religion*, I say standeth not in wearing of a monk's cowl, but in justice, righteousness, and well doing." Matthew Arnold is quoted as stating, ". . . the passage from morality to religion is made when to morality is applied emotion." (Vol. VIII, p. 5063.)

The New International Encyclopedia declares, "It is possible, however, to consider the essence of religion as *experience without regard to the object toward which it is directed.*" (Italics supplied.) (2nd Edition, Vol. 19, p. 679.)

Another source for the definition of religion is the Dictionary of Doctrinal and Historical Theology, "Religion is primarily a matter of practice, and it is sufficient for a religious system that it supplies motives enough to secure practical adherence, whether it be open to speculative objections or not." (2nd Edition, p. 632.)

Ames, Coe, King, and others, according to the *Encyclopedia Americana*, "looking for a definition of religion in terms of values, regard religion as a process in which values of a distinctly social character are heightened and intensified." (1941 Edition, Vol. 23, p. 349.)

The Dictionary of Philosophy and Psychology considers religion "the love of a person, or devotion to an idea, (which) may apparently produce the peculiar religious effect . . . so that it has for us a value of necessity exceeding all other elements of life put together, seems to coincide with traditional and philosophical idea of religion." (Pp. 455-456.) This reference continues, "a man's real religion, it may be said, is that set of objects, habits, and convictions, whatever it might prove to be, which he would rather die for than abandon. . . . It would follow from this that his actual religion may differ in any degree from his nominal creed." (P. 456.)

The Epistle of James, Chapter 1, Verse 27, is as follows, "Pure religion and undefiled before God and the Father is this, To visit the fatherless and widows in their affliction, and to keep himself unspotted from the world."

The Hebrew prophet, Micah, records in the Book of Micah, Chapter 6, Verse 8, that "It hath been told thee, O man, what is good, And what the Lord doth require of thee: Only to do justly, and to love mercy, and to walk humbly with thy God."

The views of Hillel, the great Jewish scholar and Rabbi, and contemporary of Jesus, are summarized in the Jewish Encyclopedia as "Love of man was considered by Hillel as the kernel of the entire Jewish teaching. When a heathen who wished to become a Jew asked him for a summary of the Jewish religion in the most concise terms,

Hillel said, 'What is hateful to thee, do not to thy fellow man: This is the whole law; the rest is mere commentary.' " (Vol. 6, p. 398.)

PHILOSEPHERS VIEW RELIGION

In order to get a more adequate understanding of religion, we should also consider it from a historical point of view. The philosopher, often a rebel against an established religion, often becomes the founder of a new religion. Therefore, the insights of well-known men are particularly valuable for our consideration.

Immanuel Kant treats this subject thoroughly in his book *Religion Within the Limits of Reason Alone*. He writes, "This ideal of a humanity pleasing to God . . . we can represent to ourselves only as the idea of a person who would be willing not merely to discharge all human duties himself and to spread about him goodness as widely as possible by precept and example, but even, though tempted by the greatest allurements, to take upon himself every affliction, up to the most ignominious death, for the good of the world and even for his enemies." (Pp. 55-56.) He further says, "These are representations powerful enough . . . to awaken in the other the voice of conscience commanding them still to break with evil so far as it is possible. . . ." (P. 63.)

Kant clearly distinguishes between formal religious faith and "religious belief" when he writes, "This religion . . . is which in instructing us also animates us with basic principles for action, and wholly subjects whatever Scripture may contain for historical faith to the rules and incentives of *pure moral faith, which alone constitutes the element of genuine religion* in each ecclesiastical faith." (Italics supplied.) (Same as previous.)

He further states that the founder of the first true church claims first "that not the observation of outer civil or statutory churchly duties but the pure moral disposition of the heart alone can make man well-pleasing to God . . . that, for example, to hate in one's heart is equivalent to killing; that injury done to one's neighbor can be repaired only through satisfaction rendered to the neighbor himself, not through acts of divine worship. . . ." (Same as previous, p. 147.)

A humanization of the idea of God in "religious belief" is expressed by August Comte, the father of Sociology, "Humanity, therefore, becomes for the individual the object of religious adoration. . . . 'Our thoughts will be devoted to the knowledge of humanity, our affections to her love, our actions to her service.'" Comte sums up this point of view when he writes, "Religion . . . finds its actual expression in the active service of Humanity." (*A. Seth Pringle-Pattison, The Idea of God*, pp. 139-140.)

John Stuart Mill in his *Three Essays on Religion* parallels Comte's analysis when he writes, ". . . the essence of religion . . . is the sense of unity with mankind, and a deep feeling for the general good, may be cultivated into a sentiment and a principle capable of fulfilling every important function of religion and *itself justly entitled to that name*. . . ." (Italics supplied.) (Pp. 109-110.)

The view that religious belief is not dependent upon the idea of God but more upon identification with "the whole" is expressed by Bosanquet when he writes that the religious consciousness is "the recognition by the finite of its 'true being' and of its 'union with the whole'; the insight into 'the impossibility of its finding peace otherwise than as offering itself to the whole.'" (*A. Seth Pringle-Pattison, The Idea of God*, p. 290.)

George Santayana agrees with some of these ideas when he writes, "True religion is entirely human and political. . . ." (*The Life of Reason—Reason in Religion*, Vol. 3, p. 276.) ". . . in this sense the religion of humanity is the only religion, all others being sparks and abstracts of the same." (Same as previous, p. 190.)

Henri Bergson defines one type of religion as an "open morality" which transcends particular social groups, for he writes of men who seek a "wide-open" soul and to "a love which embraces all mankind . . . they add the obligation of aspiration—aspiration on the part of others toward the new level of life which they exemplify . . . they add the religion of creative oneness with the principle of all life, issuing in a surge of unbounded love. . . ." (*Edwin A. Burt, Types of Religious Philosophy*, p. 414.)

The concept of God as Truth is revealed by Professor Alfred North Whitehead's statement that ". . . a religion, on its doctrinal sides, can thus be described as a system of general truths which have the effect of transforming character when they are sincerely held and vividly apprehended." (*Julian S. Huxley, Religion Without Revelation*, p. 150.)

The view that truth is the religion of the scientist is explained by Robert Andrews Millikan, the American physicist, as he writes, ". . . for there is another kind of religion—a religion which keeps its mind continually open to new truth . . . that eternal truth has been discovered in the past, that it is being discovered now, and will continue to be discovered." (*Evolution in Science and Religion*, p. 81.)

John Dewey gives a most comprehensive and analytical treatment of the subject of religion in his book, *A Com-*

mon Faith. He states, "It is widely supposed that a person who does not accept any religion is thereby shown to be a non-religious person. . . . I believe that many persons are so repelled from what exists as a religion by its intellectual and moral implications that they are not even aware of attitudes in themselves that if they came to fruition would be genuinely religious." (P. 9.)

Dewey believes that ". . . the adjective 'religious' denotes nothing in the way of specifiable entity, either institutional or as a system of beliefs." (Same as previous, p. 9.) He points out that "*The actual religious quality . . . is sometimes brought about by devotion to a cause . . . sometimes as was the case with Spinoza—deemed an atheist in his day—through philosophical reflection.*" (Same as previous, p. 14.) Dewey clearly specifies that "*Any activity pursued in behalf of an ideal and against an obstacle, and in spite of threats of personal loss because of conviction of its general and enduring value is religious in quality.*" (Same as previous, p. 27.) "*The positive lesson is that religious qualities and values if they are real at all are not bound up with any single item of intellectual assent, not even that of the existence of the God of Theism.*" (Italics supplied.) (Same as previous, p. 33.)

Several attempts to define religion have been made as follows:

"Religion is the vision of something which stands beyond, behind and within, the passing flux of immediate things; something which is real, and yet waiting to be realized; something which is a remote possibility, and yet the greatest of present facts; something that gives meaning to all that passes, and yet eludes apprehension; something whose possession is the final good, and yet is beyond

all reach; something which is the ultimate ideal, and the hopeless quest." (*Alfred North Whitehead, Science and the Modern World*, p. 275.)

"Religion (in these highest forms) is the interpretation both of the eternal and of the spirit of loyalty through emotion, and through a fitting activity of the imagination." (*Josiah Royce, The Philosophy of Loyalty*, p. 377.)

"Whoever finds his loyalty, so that life means not grasping what the self can get but giving to some worthy end what the self can expend, has found an authentic religious experience." (*Harry Emerson Fosdick, As I See Religion*, p. 16.)

Religion is that aspect of a person's experience, including his thought, feeling, and actions, whereby he endeavors to live in relationship with what he deems to be the divine, i. e., the worthful power controlling the world.—(*Hume.*)

Religion is man's reasoned thought about the universe of which he is a part, the emotions evoked by that thought, and the conduct in which it issues.—(*Craig.*)

Religion is man's feeling reaction to the idea of the great all-encompassing, all-penetrating whole to which he belongs.—(*Muirhead.*)

Religion is belief in a power not ourselves which makes for righteousness and the desire to come into harmonious relations with that power.—(*Adapted from Arnold.*)

RELIGION AS VIEWED BY SCIENTISTS.

Although scientists are not ordinarily considered as interpreters of religion, there is no doubt that many are deeply religious and have attempted to interpret religion in the light of their specialized fields.

For instance, William James states in his famous book *Varieties of Religious Experience* that "Faith in God is at bottom a conviction that the best things in the universe are the more eternal things, and that our present lives are enriched by holding to this conviction. . . ." (*Edwin H. Burt, Types of Religious Philosophy*, p. 414.) He also stated that religious attitudes must have "some object of the experience" which he designated as "the Divine," warning that "we must interpret the term 'divine' very broadly as denoting any object that is godlike *whether it be a concrete deity or not.*" (Italics supplied.) (*John M. Moore, Theories of Religious Experience*, p. 34.) And again from his own book—"Religion consists in the feelings, acts, and experiences of individual men in their solitude, so far as they apprehend themselves to stand in relation to whatsoever they may consider the divine."

Julian Huxley goes on to say that religion is not essentially believing in God or obedience to his commands or will, but "a way of life art like other kinds of living . . . which must be practiced like other arts if we are to achieve anything good in it." (*Religion Without Revelation*, p. 174.)

Albert Einstein describes the development from a religion of fear to a moral religion, but sees the culmination of religious belief in his attitude, ". . . there is a third stage of religious experience which belongs to all of them even though it is rarely found in a pure form, and which I will call cosmic religious feeling. It is very difficult to explain this feeling to anyone who is entirely without it, especially if there is no anthropomorphic conception of God corresponding to it. . . . He looks upon the individual existence as a sort of prison and wants to experience the universe as a single significant whole. . . .

The religious geniuses of all ages have been distinguished by this kind of religious feeling, which knows no dogma and no God conceived in man's image; so there can be no church whose central teachings are based on it. Hence it is precisely among the heretics of every age that we find men who were filled with the highest kind of religious feeling, and were in many cases regarded by their contemporaries as atheists, sometimes also as saints." (*The World as I See It*, p. 264.)

Sir Arthur Eddington goes so far as to disclaim the necessity of a belief in God in order to be religious. As he points out—"For this reason I do not attach great importance to the academic type of argument between atheism and deism. At the most it may lead to a belief that behind the workings of the physical universe there is need to postulate a universal creative spirit, or it may be content with the admission that such an inference is not excluded. . . . Religion does not depend on the substitution of the word 'God' for the word 'Nature.'" (*Science and the Unseen World*, pp. 68-72.)

Eddington also has something to say about the place of creeds in religion: "Rejection of creed is not inconsistent with being possessed by a living belief. We have no creed in science, but we are not lukewarm in our beliefs. The belief is not that all the knowledge of the universe that we hold so enthusiastically will survive in the letter; but a sureness that we are on the road. If our so-called facts are changing shadows, they are shadows cast by the light of constant truth. So too in religion we are repelled by that confident theological doctrine which has settled for all generations just how the spiritual world is worked;

but we need not turn aside from the measure of light that comes into our experience showing us a Way through the unseen world." (Same as previous, pp. 90-91.)

SOME CONTEMPORARY THINKERS VIEW RELIGION

George Bernard Shaw has written that "That which binds men to one another (is religion) and irreligion that which sunders." (*Harry Emerson Fosdick, As I See Religion*, p. 2.)

Harry Emerson Fosdick believes that "Religion is essentially the release of life through its committal to the highest that we know. . . . Whenever anybody finds any goodness, truth or beauty concerning which he feels, not that it should give itself to him, but that he should give himself to it and be its loyal servant, that man has entered an authentic religious experience."

Henry P. Van Dusen, a well-known theologian, sees religion not as a set of dogmatic beliefs or theological concepts but as the total reaction of the person to the totality of living, and powerfully expresses this when he writes, "Religion is interwoven with the very nature of man's being, the great understandings and certainties of faith—all of them—are implicit in life. Entrance into its presence is through eagerness, earnestness, honesty of seeking; and through integrity, daring, fidelity of living." (*Reality and Religion*, p. 30.)

Dr. John Haynes Holmes, minister of Community Church, quotes Professor Nathaniel Schmidt, as he seeks to adequately describe religion in his book *The Sensible Man's View of Religion*. "Religion is a mood of behavior, a will to live in a particular way. . . . Religion is in the last analysis a devotion to the highest.

. . . It is the direction of the mind toward what is conceived to be the highest truth, of the will toward the highest duty, the chief thing to be done. . . . Religion is the consciousness of some power manifest in nature which helps man in the ordering of his life in harmony with its demands." (P. 11.) Dr. Holmes' own thought is, "Religion is the supreme expression of human nature; it is man thinking his highest, feeling his deepest, and living his best." (*New Churches for Old*, p. 119.)

A leading teacher of religious education, Georgia Harkness of Garrett Biblical Institute, effectively presents the case for a religion based upon a meaningful life rather than lip service to creeds. She writes, "Religion means fundamentally faith in a meaningful existence—a faith which, far more than the dicta of creeds, has been shattered in our day. The way to recover this faith is to recognize that a meaningful existence implies *wholeness*—the integration of life about a center with radii extending in proper balance to every aspect of life." (*The Recovery of Ideals*, p. 30.)

Crawford Howell Toy writes, "Religion is a man's attitude toward the universe regarded as a social and ethical force; it is the sense of social solidarity with objects regarded as Powers, and the institution of social relations with them." (*Introduction to the History of Religions*, p. 1.)

Romain Rolland is quoted by Anup Singh as saying, "(Religion is) search for truth at all costs with single-minded sincerity prepared for any sacrifice—faith in an end to human effort higher than the life of existing society, and even higher than the life of humanity as a whole." (*Anup Singh, Nehru, the Rising Star of India*, pp. 124-5.)

The idea that it is the *devotion* and *dedication* to an object rather than the *object* that is the essence of religion is clearly expressed by Walter M. Horton when he writes, "Indeed it may be said that anyone who has found something to live for, something to serve with disinterested devotion, something that is his joy and pride . . . has found his God." (*God*, p. 11.) The expression of this devotion to God is through human relations, as envisaged by Horton. "We are very near to God whenever we try to do anything well, and reach out for the needed 'inspiration'; and we are very near to God whenever we enter into relations of mutual aid and affection with our fellowmen. . . ." (Same as previous, p. 58.)

"To be religious, as a personal experience, is to take a total attitude toward the universe. It is to comprehend one's relation to the divine, however the divine be conceived. The objects of veneration have had a different meaning for different individuals, groups, and generations. But whatever be the conception of the divine object, the religious attitude seems to have this stable feature: It is always an awed awareness on the part of the individual of his relation to that "something not himself," and larger than himself, with whom the destinies of the universe seem to rest. This somehow sensed relation to the divine appears throughout all the varieties of religion that have appeared in the world, and among many individuals not popularly accounted religious." (*Irwin Edman, Human Traits and Their Social Significance*, pp. 280-2.)

"What does a man secretly admire and worship? What haunts him with the deepest wonder? What fills him with

most earnest aspiration? What should we overhear in the soliloquies of his unguarded mind? This it is which, in the truth of things, constitutes his religion." (*James Martineau, Endeavors After the Christian Life*, p. 222.)

This way of service is open to all men for . . . there are many paths to the presence of God, conventional and unconventional, various enough so that men of every temperament can find their way to him from where they are." (Same as previous, p. 63.)

The Rabbinical Assembly of America states, "In the light of the very nature of religion, we affirm that the discussion of problems of social and economic justice and the evaluation of movements to abolish exploitation, poverty, war, and other social evils are not only legitimate, but even necessary concerns of the synagogue."

Rabbi Robert Gordias, Professor at Jewish Theological Seminary, writes, "The first objective of the church must be to sensitize the human conscience to injustice and its consequences."

Rabbi Maurice N. Eisendrath notes that "From Abraham's query, 'Shall not the Judge of all the earth do justly,' through Moses and Job, down to the last of the hasidic rabbis and Berditshevski, the emphasis of Jewish thought and teaching, principle, precept, and practice has been upon justice. . . . It was this concept which became not merely *one* aspect of ancient Judaism, but the *chief* desideratum of our ancestors' religious system, and the more profoundly religious knowledge penetrated into the life of the ancient Hebrew, the more weight was laid

upon this *single* consideration, until the literary prophets crystallized the concept by declaring that religion and the knowledge of God were identical with Social Justice."

. A GOVERNMENT OFFICIAL'S VIEWPOINT

"It is my feeling that each case must be considered individually and that no presidential appeal decision can be considered as a binding precedent. In each case I must be satisfied that the objection is based on 'religious training and belief' which contemplates recognition of some source of all existence which, whatever the type of conception, is Divine because it is the Source of all things. Religious belief, however, is more important than 'training' because we are too prone to have the schoolmaster in mind and hours, days, weeks, years of study when we weigh the meaning of training. Even there, one gets it by the long processes—another by 'cramming.' Does he get it? That's the question. If so, it involved training of some kind. I have some doubt about absorption through 'bolts from the blue' even though I do not toss aside entirely St. Paul's experience on the Road to Damascus. These are the exceptions and probably he had a lifetime of training crammed into that one hour. Somewhere I think the record will tell the story satisfactorily in the given case whether it is in the form of long-drawn-out processes of schoolmaster training or otherwise. Which-ever it is, the weight of the evidence is strengthened or diminished in consideration of all the facts." (*Letter by Lewis B. Hershey, Director, Selective Service System, to the Department of Justice, March 5, 1942.*)

RELIGION AS DEFINED BY A COURT

Religion has been judicially defined as follows: "In its primary sense (*religare*, to rebind, to bind back) it imparts, as applied to moral questions only a recognition of a conscientious duty to recall and obey restraining principles of conduct, in such a sense we suppose there is no atheist who will admit he is without religion." (*Supreme Court of California*, 1881, *Hinckley*, Vol. 58, Cal. 457, p. 512.)

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APPENDIX D.

Comment on Opinion of United States Circuit Court of Appeals for the Ninth Circuit on the Case of Herman Berman vs. United States.

By WALTER GEORGE MUELDER, Dean and Professor of Social Ethics, Boston University School of Theology, Boston, Massachusetts.

In a case like that of Herman Berman material justice requires some appreciation of the dynamic development of the meaning of religion in the United States. It is a purely formal technicality which would read a particular view of religion into the Constitution of the United States as of the date of the First Amendment and then force all subsequent religious experience into the Procrustes bed of that view. Some of the signers of the Declaration of Independence and the Constitution were deistical in their beliefs. A study of the Deistical Society, certainly a religious group, shows that its authority was essentially rationistic and not supernaturalistic and authoritarian. I tried to show in my letter to Mr. Bledsoe, which appears in Appendix "B" to this brief (and in the brief before the Court of Appeals), that whole sections of organized Christianity today hold to a humanistic conception of religion. The quotation from Prof. John Dewey was not cited as an expression of my personal religious belief, but as a conception rather widely held in our American culture, one which it would be unfair and arbitrary to dismiss. Those of us who have scholarly responsibilities in the field of religion are compelled by the anthropological and historical facts to include persons like Herman Berman as religious. It is, therefore, of the utmost importance that the courts take full account of social facts if they are to

guard the justice of the community and the religious liberty of its citizens.

In an area as controversial as religion, the standard dictionaries are not of much help. For precision it is necessary to consult a wider range of scholarly works.

The paragraph of page 7 (of the Circuit Court's opinion) beginning "Yet all discoveries . . . etc.," is an interesting and significant expression of the faith of the persons concurring in the opinion rendered by the Court. But it is nevertheless an unfair assumption of fact regarding thousands of men who do not possess that type of "fox hole" religion and for whom conscience and national patriotism comprised the resources when strength flagged and courage was tempted to wane. Many were undoubtedly sustained by the same type of religious humanitarianism which Herman Berman espouses. The judges simply beg the question when they assume the supernaturalistic fact as the frame of reference for faith.

But if this paragraph were true, the judges should have drawn a different conclusion regarding Berman. If God directly is involved to "satisfy the soul hunger" and "to understand the daily joys and sadnesses and disappointments of life," then a person with as steady a loyalty and as steady a faith in human service, especially in the face of hardship, as Berman's record indicates, must at least be credited with being sustained by the "supreme power" whether he calls upon him directly or not. The faith is religiously effective. In a God-guided universe every event is theologically significant. The conscience of Herman Berman can be no exception. Men do not gather grapes from thistles. Conscientiousness is a spiritual fact, a primary empirical datum; the theological interpretation or definition of religion must respect the fact.

I shall now cite several recent scholarly works which recognize the type of attitude which Berman takes towards life as religious. Dr. Nels F. S. Ferre, Abbott Professor of Christian Theology, Andover Newton Theological Seminary, in *Faith and Reason* (Harper's, 1946), says: "Religion we have defined as our normally necessary whole—response to what is considered to be most important and most real" (p. 29). "Theology," he goes on to say, "is the interpretation of all our actual choices—how we treat persons, property, ourselves, our talents, how we live all in all—in the light of the inescapable reality to which we must react and keep reacting" (p. 133).

In *Types of Religious Philosophy* (Harper's, 1939), E. A. Burttt devotes fifty-eight pages to "Humanism." He shows that it is one of the great assumptions of humanism that devotion to sharable social goods makes for integrated personality and is the essence of religion (see p. 407). Burttt's comment on the historical setting of humanism is important: "On the one hand, many of its adherents are humanists because they feel humanism to be the inevitable outcome of all the forces which have been progressively working in modern times toward a more liberal religious orientation. They have seen Catholicism give way, in many areas of the modern West, to classical Protestantism, and they have seen orthodox Protestantism itself replaced by modernism. Humanism represents to them essentially a natural further advance in the same evolutionary movement; it is a radical and more consistent development of the principles which modernism has cautiously and tentatively trusted. It is the intellectual interpretation of the kind of religious experience that men find themselves sharing when the forces already expressed in the distinctive attitude of Protestantism, and

rendered bolder and more self-conscious in modernism, are allowed full and unhindered expression. The presence among humanist leaders of a number of Unitarian ministers and theologians is to be accounted for by this fact" (pp. 351-352). One of the intellectual factors in this position is a "profound respect for modern science and a whole-hearted acceptance of its essential postulates—that the universe is a non-providential, law-abiding order and that the ultimate court of appeal in the quest for truth is present empirical fact" (p. 353). Another assumption involves a revision of the scale of religious values as seems to be required by the commitment to science. "This revision involved a concentration on those moral and social ideals that appeared to be harmonious with science, and an abandonment of the rest as religiously irrelevant" (p. 353). From these considerations humanists press to the following point regarding the essence of religion (a point which is not adequately faced by the majority opinion in the case at hand): "If we are in earnest in our commitment to empirical method with its appeal to present psychological fact, and if we really mean that the essence devotion to a supreme ideal, then in strict logic it is permissible to convert this definition and affirm that whatever is empirically discovered to perform this function for men and women is religious" (p. 356; cf. J. Dewey, *A Common Faith*, pp. 13-17).

As a student of religious movements and institutions I do not wish to comment here on whether humanism represents the true faith or metaphysics. But what is absolutely essential to the protection of material justice is that the restricted definition of religion used by the Court not be the exclusive and determinative conception. *The religious adjustment of thousands of persons is no longer supernatural.*